

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PORTSIDE GROWTH AND OPPORTUNITY  
FUND,

Plaintiff,

-against-

GIGABEAM CORPORATION,

Defendants.

Case No. 07-CV-6990 (NRB)

ECF CASE

NOTICE OF MOTION FOR  
SUMMARY JUDGMENT

PLEASE TAKE NOTICE that upon the annexed Declaration of Jeffrey C. Smith, the exhibits annexed thereto, the accompanying Statement of Material Facts as to which there is no genuine issue to be tried, the accompanying Memorandum of Law, and upon all pleadings and proceedings heretofore had herein, Plaintiff will move this Court before the Honorable Naomi Reice Buchwald at the United States Courthouse, 500 Pearl Street, New York, New York on a date to be set by the Court for an Order:

1. Pursuant to Rule 56, Fed. R. Civ. P., granting summary judgment to Plaintiff on its first claim for relief in the amount of \$1,418,337.93, plus interest, for breach of contract arising from Defendant's failure to deliver securities to Plaintiff; and

2. Pursuant to Rule 56, Fed. R. Civ. P., granting summary judgment to Plaintiff on the second claim for relief for specific performance and permitting Plaintiff to elect its remedy between the first and second claims; and

3. Pursuant to Rule 56, Fed. R. Civ. P., granting summary judgment to Plaintiff in the amount of (i) \$13,680 as partial liquidated damages under the Registration Rights Agreement, plus interest at 18% per annum thereon until paid in full, starting from June 7, 2007; and (ii) awarding interest at 18% per annum thereon until paid in full, starting from July 17,

2007, on the "Triggering Redemption Amount," which is \$451,486.26, pursuant to the Certificate of Designation; and

4. Awarding Plaintiff its Attorneys' fees and costs, pursuant to Defendant's Certificate of Designation;
5. Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York  
October 5, 2007

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